

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Zachary Herman	Team: Squad #12	CCRB Case #: 201909614	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 11/04/2019 7:15 AM	Location of Incident: Northbound C platform at the Liberty Avenue subway station	Precinct: 75	18 Mo. SOL 5/4/2021	EO SOL 12/19/2021	
Date/Time CV Reported Mon, 11/04/2019 1:34 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 11/04/2019 1:34 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Denzil Dsouza	05223	948918	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jonathan Cancel	14827	963894	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Denzil Dsouza	Discourtesy: Police Officer Denzil Dsouza spoke discourteously to § 87(2)(b)	
B.POM Denzil Dsouza	Force: Police Officer Denzil Dsouza used physical force against § 87(2)(b)	
C.POM Denzil Dsouza	Discourtesy: Police Officer Denzil Dsouza spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

## Case Summary

On November 4, 2019, § 87(2)(b) filed the below complaint over the phone to Inv. Mintz.

On November 4, 2019, at approximately 7:15 a.m., § 87(2)(b) was on a northbound C train commuting to work. PO Denil Dsouza of the 75<sup>th</sup> Precinct told the conductor to stop the train at the Liberty Avenue station in Brooklyn, which the conductor did. § 87(2)(b) and the other passengers on the train asked PO Dsouza what was happening. PO Dsouza said that there was a missing 10 year-old. § 87(2)(b) stated that he needed to get to work. PO Dsouza allegedly called § 87(2)(b) an “asshole” (**Allegation A: Discourtesy**, § 87(2)(g)). PO Dsouza walked away towards the end of the train, and when he returned, § 87(2)(b) spoke with him again. PO Dsouza used both of his hands to push § 87(2)(b) in the chest (**Allegation B: Force**, § 87(2)(g)). § 87(2)(b) told PO Dsouza not to touch him. PO Dsouza allegedly stated to § 87(2)(b) “I don’t give a shit” (**Allegation C: Discourtesy**, § 87(2)(g)). PO Dsouza then left the area.

§ 87(2)(g), § 87(4-b)

No BWC footage was generated in connection with this incident.

## Findings and Recommendations

**Allegation (A) Discourtesy: Police Officer Denzil Dsouza spoke discourteously to § 87(2)(b).**

§ 87(2)(b) provided a sworn statement to the CCRB (BR01) in which he testified that on November 4, 2019, at approximately 7:15 a.m., he was on the subway platform of the Liberty Avenue subway station on the C train in order to commute to work. A train arrived and when the doors opened, PO Dsouza instructed the conductor to hold the train due to a police investigation. § 87(2)(b) was anxious to get to work because he had recently started a new assignment. As PO Dsouza walked by his train car, § 87(2)(b) stepped out of the train car, approached PO Dsouza, asked PO Dsouza why he had stopped the train and noted that people were trying to get to work. PO Dsouza moved so that he was a few inches in front of § 87(2)(b)’s face and informed § 87(2)(b) that there was a ten-year-old child missing. PO Dsouza said that if it was § 87(2)(b)’s child, then he would want him found. § 87(2)(b) did not appreciate PO Dsouza “jumping” in his face and told PO Dsouza that he “didn’t give a shit,” that it was not important to him, and that PO Dsouza needed to tell the conductor about the missing child, not him. PO Dsouza started walking away from § 87(2)(b) toward the conductor. PO Dsouza told § 87(2)(b) something to the effect of: “If it was your kid, you’d want us looking for him, asshole.” § 87(2)(b) did not recall if PO Dsouza’s exact words included the word “asshole.”

§ 87(2)(b) initially filed this complaint in person with the Internal Affairs Bureau on November 4, 2019 (BR11). In his initial statement to IAB, he did not report that PO Dsouza used any discourteous language.

PO Dsouza testified to the CCRB (BR03) that he and his partner PO Jonathan Cancel were at the 75<sup>th</sup> Precinct stationhouse when he received a radio run regarding a missing eight-year old child. PO Dsouza and PO Cancel rushed out of the stationhouse to assist 75<sup>th</sup> Precinct Sector D. After conferring with other officers and the child’s mother, PO Dsouza traveled to the nearest train station and began searching for the child. PO Dsouza then traveled to a train station identified by the investigation as the Liberty Avenue subway station on the C train. At the Liberty Avenue

subway station, PO Dsouza requested that the conductor hold the train so he could search for the missing child on the train. PO Dsouza went car by car, calling the child's name. While he conducted the search, at the third or fourth car, § 87(2)(b) obstructed PO Dsouza's path and began to yell at PO Dsouza. § 87(2)(b) stated, "Hurry the fuck up. Can you get the train moving? I gotta get to work." PO Dsouza responded that he was looking for a missing eight-year-old, and that the train would be on its way as soon as PO Dsouza completed his search. § 87(2)(b) responded by stating he "did not give a fuck" about the eight-year-old, and that "she can die, I don't care." Other than informing § 87(2)(b) regarding why the train had stopped, PO Dsouza did not recall anything else he said at that point. PO Dsouza did not respond and walked away from § 87(2)(b). PO Dsouza did not recall calling § 87(2)(b) an asshole or a dickhead. PO Dsouza did not recall using any profanity directed towards § 87(2)(b). PO Dsouza did not generate BWC footage regarding this incident.

PO Cancel provided a statement to the CCRB (BR02) in which he stated that he did not recall if he was present for the entire duration of PO Dsouza's interaction with § 87(2)(b) as he and PO Dsouza searched the train from opposite ends. PO Cancel did not recall hearing PO Dsouza use profanity while speaking with § 87(2)(b). PO Cancel was not equipped with a BWC at the time of this incident.

A subpoena for video footage was submitted to the MTA on November 19, 2019 (BR14). The MTA sent a response dated December 9, 2019 in which they wrote that the MTA's Electronic Field Maintenance Unit conducted a search and confirmed that there is no video recording equipment installed at the Liberty Avenue subway (BR15).

§ 87(2)(b), § 87(2)(g)  
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**Allegation (B) Force: Police Officer Denzil Dsouza used physical force against § 87(2)(b).**

As PO Dsouza walked away from § 87(2)(b), § 87(2)(b) told PO Dsouza that officers were "quick to shoot black men but not quick to find a kid." This remark seemed to upset PO Dsouza, who walked back to § 87(2)(b). PO Dsouza spoke to § 87(2)(b) about the situation, but § 87(2)(b) could not recall what he said. PO Cancel walked down the stairs around this time and stood by § 87(2)(b). PO Cancel did not speak to § 87(2)(b). § 87(2)(b) told PO Cancel that they were stopping hundreds of people, that they needed to move the train, and that if there was a ten-year old child missing, then they probably were just on their way to school. PO Dsouza told § 87(2)(b) that he was going about the situation the wrong way. PO Dsouza placed both of his hands on § 87(2)(b)'s chest and pushed him, causing him to stumble two steps backwards. § 87(2)(b) could not recall what was happening right before the push as what PO Dsouza was saying was "going in one ear and out the other." § 87(2)(b) told PO Dsouza not to put his hands on him. PO Dsouza stepped toward § 87(2)(b) and pushed § 87(2)(b) again in the same manner as before. § 87(2)(b) was very upset, stepped toward PO Dsouza, and told PO Dsouza, "I really feel like cracking you in the face right now." § 87(2)(b) flinched toward PO Dsouza in an attempt to scare him into thinking that he was going to hit him. § 87(2)(b) did not hit PO Dsouza. § 87(2)(b) felt that as a security guard, he

should be able to use the same type of force as a police officer. In his initial statement to IAB, § 87(2)(b) § 87(2)(b) alleged that PO Dsouza pushed him three times.

PO Dsouza stated that he completed his inspection of the subway train and walked back to the front of the train to speak with the conductor. A large crowd clustered near the front of the train. § 87(2)(b) § 87(2)(b) was speaking loudly in the vicinity of the crowd, which comprised 25-30 people. No other civilians were yelling or causing a scene in the way § 87(2)(b) § 87(2)(b) was. When he returned to the front of the train, either before or after he spoke to the conductor, § 87(2)(b) § 87(2)(b) told PO Dsouza to “hurry the fuck up,” and made other statements to that effect. PO Dsouza did not recall what he said in response to § 87(2)(b) § 87(2)(b) balled his fists and began to move towards PO Dsouza in a way that led PO Dsouza to believe § 87(2)(b) § 87(2)(b) might attempt to assault him, and got within one foot of PO Dsouza when he approached, PO Dsouza characterized the movement as a “lunge.” PO Dsouza extended both of his arms at approximately chest height in front of his body and extended his arms as his hands made contact with § 87(2)(b) § 87(2)(b) s body, causing § 87(2)(b) § 87(2)(b) to move backwards. PO Dsouza did not come into any additional physical contact with § 87(2)(b) § 87(2)(b). At the point this occurred, PO Dsouza could have arrested § 87(2)(b) § 87(2)(b) for disorderly conduct because, § 87(2)(b) § 87(2)(b) was disrupting PO Dsouza’s investigation, speaking with a loud voice, and causing public attention.

PO Cancel did not recall how far apart § 87(2)(b) § 87(2)(b) and PO Dsouza were when they were speaking. PO Cancel did not recall if PO Dsouza ever pushed § 87(2)(b) § 87(2)(b). PO Cancel did not recall if PO Dsouza ever made any physical contact with § 87(2)(b) § 87(2)(b). PO Cancel did not recall if § 87(2)(b) § 87(2)(b) ever complained that PO Dsouza came into physical contact with him in any way.

Neither officer had a body-worn camera on their person, and the MTA did not provide video in response to a subpoena.

§ 87(2)(b), § 87(2)(g)  
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NYPD Patrol Guide 221-01 governs NYPD use of force. It states that officers use of force must be reasonable, and must take into consider the following factors when using force: The nature and severity of the crime/circumstances, the actions taken by the subject [of the force], the duration of the action, the immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, the number of subjects in comparison to the number of members of service, the size, age, and condition of the subject in comparison to the members of service, the subject's violent history, if known, the presence of a hostile crowd or agitators, whether the subject was under the influence of any substance which would affect pain tolerance (BR07).

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**Allegation (C) Discourtesy: Police Officer Denzil Dsouza spoke discourteously to § 87(2)(b)**

After PO Dsouza pushed § 87(2)(b) decided it would be imprudent to get into a further physical interaction with him. § 87(2)(b) told PO Dsouza that he was going to file a report against him. PO Dsouza replied, “I don’t give a shit” (BR01).

PO Dsouza testified that after he pushed § 87(2)(b) he spoke to the conductor and left the train station. PO Dsouza did not recall using any profanity directed towards § 87(2)(b) (BR03).

PO Cancel did not recall if § 87(2)(b) ever told PO Dsouza that he was going to file a complaint against him. PO Cancel did not recall if PO Dsouza ever said, “I don’t give a shit” in response to § 87(2)(b) saying he was going to file a complaint against him. PO Cancel did not recall if PO Dsouza ever used any profanity toward § 87(2)(b) (BR02).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to two CCRB complaints and has been named as a victim in 18 allegations (BR06).
  - § 87(2)(b)
- PO Souza has been a member-of-service for ten years and has been the subject of one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- § 87(2)(b)
- As of March 30, 2021, the New York City Office of the Comptroller has no record of any Notice of Claim being filed in regards to this case (BR12).

Squad No.: 12

Investigator: Zachary Herman      Investigator Zachary Herman      03/30/2021  
Signature      Print Title & Name      Date

Squad Leader: Carlmais Johnson      IM Carlmais Johnson      September 22, 2021  
Signature      Print Title & Name      Date

Reviewer: \_\_\_\_\_  
Signature      Print Title & Name      Date